

THE
JUDGMENT and DOCTRINE
Of the *Clergy* of the
Church of England,
CONCERNING
One special Branch of the King's *Prerogative*,
Viz. In dispensing with the
Penall Laws,

Asserted by
The most Reverend Fathers in God, The Lords Arch-Bishops
Bancroft, Laud and Usher.

The Right Reverend Fathers in God, The Lords Bishops
Sanderson and Cartwright.

The Reverend Doctors, Sir **Thomas Ridley L. L. D.**
Dr **Heylin, Dr Barrow, Dr Sherlock** Master of the
Temple, Dr Hicks, Dr Mardon and Dr Puller.

And by the *ANONYMUS*, Author of the *Har-*
mony of Divinity and Law.

Together with the *Concurring Resolutions* of our Reverend
Judges, as most *Consonant and Agreeable* thereunto.

In a Letter from a Gentleman of Oxford, to his Friend at London.

Licenced the 2d. of May 1687.

Upon whomsoever God is understood to bestow the Sovereign Authority, he must
also be understood to bestow upon him all the *Fura Majestatis, or Essential Rights*
of Sovereignty, according to that Maxim, *Qui dat esse, dat et omnia pertinencia ad*
esse; He that gives the Essence, gives also the Properties belonging to the Essence.
Jovian, or an Answer to Julian the Apostate, chap. 11.

London, Printed for J. H. and T. S. and are to be had at most Book-sellers, in
London and Westminster.



SIR,

IN one of the late Conferences you were pleased to have with me, you seemed to be somewhat disatisfied upon the subject we were discoursing of, which was, whither the *King* had by Law such a *Supream Power* inherent in, and inseparably annexed to his Crown, as to Dispence with Penal Laws.

I remember I then told you, we could not resolve our selves of this Great Point, but by these two wayes.

I. To see, how far the *Judgment* of our Church-men, appearing in their *Doctrines* (which are for our Edification) doth Warrant this *Prerogative* to be in the *King*.

A 2

II.

II. To see how far the *Judges Resolutions* (in declaring their sense of the *Law of the Land* in this doubtful *Question*,) do agree with such their *Judgments* and *Doctrines*.

And as for the *First*, Sir, I doubt not but to make it clear, past all peradventure, that our *Reverend Clergy* of the Church of *England* have unanimously concurred in this Point of Doctrine, that it doth inseparably belong to the *King-ly office to dispence with Penal Laws*, when ever such a *Supremacy* of Power shall be thought necessary to be exerted for the safety of the King, and the Good and Ease of his People in general. And if I can prove this undeniably to You; I hope then that this nice Scruple of yours (which by the way, I suppose, you will allow me to call your *tender Conscience*) will easily be removed; and consequently then it may be presumed, I shall have

have less difficulty to Satisfie You in the other Point, that *this sense* of the *Law* of the Land in the point in Question, is no other, than what is *exactly Correspondent* with the *Judgment* and *Doctrine* of the Clergy of the Church of *England*.

To begin then,

The Reverend Dean of *Worcester*, in his so deservedly applauded Answer to *Julian the Apostle*, declares, that *the English Realm is a perfect sovereignty, or Empire, and that the King of England by the Imperial Laws of it, is a Compleat, Imperial, and Independant Sovereign*. And he quotes *Coke* in *Cawdrye's Case*, who saith, that 'by the antient Laws of this Realm, *England* is an absolute Empire, and Monarchy; and that the King is furnished with plenary and Entire Power, Prerogative, and Jurisdiction, and is supream Governour over all persons within this Realm.

*Dr Hick's Fe-
vian. chap. 10.*

Now it would be a contradiction to call this.

this an Imperial Crown ; to acknowledge the King for supream over all Persons, —— and that he is furnished with Plenary and entire Power , unless He have all Those Rights, which are involved in the very Notion of his Imperial Sovereignty.

By the Rights of Sovereign, saith He, I understand Those Prerogatives, and Pre-eminentes of Power and Greatness, which are involved in the Formal Conception of Sovereignty, and are inseparably annexed to the Sovereign. —— He hath no sharers or Co-partners in the Sovereignty ; None Co-ordinate with him in Government ; no Equal , nor Superior , but only God, to whom Alone He is subject, —— ‘ All Power and Jurisdiction Spiritual and Temporal is derived and deducted from Him, as supream Head of These Churches, and Realms.

Sir Robert
Pointz Knight
of the Bath,
his vindication
of Monarchy.
chap. 8.

There are some Essential Rights of the Crown, which the Subjects cannot obtain from their Sovereign by any Grant or prescription

scription, without destroying the essential and individual Rights of Monarchy. These Rights, called the Flowers of the Crown, are Regalia Suprema, or Summa Jura Imperij, regno tuendo servientia, inherent to his Royal Function, and politick Capacity, and serve for the strength and support thereof — such are the Rights of making War and Peace, of having the last Appeal unto him, or his Great Council and suprem Court; and of making Leagues, and of Dispensing with Penal Laws, granting pardons, and such like.

Now if the King hath a perfection and fulness of Imperial Power in him, as Dr. Hicks <sup>Dr. Hicks ut.
Sup.</sup> hath clearly made out, and This Power of dispensing with Penal Laws be (as it must be, or nothing) one of those Prerogatives and Pre-eminencies of power and Greatness, which are involved in the Formal Conception of Sovereignty; Then certainly it is very plain, that This is an Essential Right inseparably annexed to our Imperial Sovereign: and to go about
to

to deprive him of such an inherent Right, it would tend to the disinherison of the King and his Crown. This Phrase, he saith, of the disinherison of the King and the Crown in other * Acts of Parliament is called, *The Destruction of the King's Sovereignty, his Crown, his Regality, and things that tend thereunto, things that are openly against the King's Crown in Derogation of this Regality.*

4 Inst. p 14.
Suprema Jurif-
dictio & potef-
tas Regia, et si
Princeps velit,
se seperari non
possunt, sunt
enim ipsa for-
ma, et Subitan-
tialis Essentia
Majestatis, ergo
manente Rege
ab eo abdicari
non possunt.
Cavedo, Pract.
obſerv. p. 2.
decif. 40. n. 8.

* Stat. of Prae-
munire, 16. R.
2. cap. 5.

And, Sir to convince You, that the King hath this Perfection and fulness of Power, more especially in matters of Religion, in his sacred Person, you may please to be informed, that that Great Me-

Dr. Richard
Bancroft made
Lord Arch-
Bishp of Cant.
1604.
12. Co. fo. 64.
5. Jac.

tropolitan of All England, 'Arch-bishop Bancroft, when Question was made of what matters the Ecclesiastical judges have cognisance, either upon the exposition of the Statutes concerning Tythes, or any other thing Ecclesiastical, or upon the Statute i Eliz. concerning the High Commission, or in any other case in which there is not express Authority in Law, declared

declared, ‘That the King himself may decide it in his Royal Person; and that the Judges are but the Delegates of the King, and that the King may take what causes he shall please to determine, from the Determination of the Judges, and may determine them himself. And the Archbishop said, that this was clear in Divinity, that such Authority belongs to the King by the word of God in the Scripture. So that Eminent Prelate.

For, as it is well observed by that Learned Knight, and Doctor in the Civil Law, Sir Thomas Ridley. ‘His Majesty, by communicating his Authority to the Judges to expound his Laws, doth not thereby abdicate the same from himself, but that he may assume it again to him, when, and as often as he pleaseth, whose Interpretation in that is to be preferred before Theirs. For, as he saith in another place, ‘He is both by the Ordinance of God and Man, *as $\omega\alpha\pi\tau\chi\omega\nu$* , (as the Apostle terms him) among them, that is, One who is Supreme Sovereign above the

*Ridley's View
of the Civil and
Ecclesiastical
Law. dedicated
to King James
1. 3d Edition,
part 4. chap. 1.
Sect. 1.*

*Id. part 2. ch. 1
sect. 7.*

1 Pet. 2. 13.

B

Rest,

' Rest, and whom they ought in *all* things
 ' to obey, so it be not against the *Law* of
 ' God, and *Common Justice*; for himself
 ' is instead of the *whole Law*, Yea, he is
 ' the *Law* it self, and the *only INTER-*
 ' *P R E T E R* thereof, as in whose *Breast*
 ' is the *whole Knowledge* of the same.

Now, Sir, what Answer can you give
 to all This? if it be *clear in Divinity*, that
 such Authority belongs to the King by the
 word of God in the Scripture, with what
 Colour of Reason can you deny the King's
Imperial Sovereignty in dispensing with Pe-
nal Laws?

But to proceed more clearly to the Point
 in Question, The most Reverend, Renowned
 and Religious Prelate and Patriot, Dr
 W.Laud, Archbishop of Canterbury, 'A man

Cyprianus Ang-
licus, by Dr Hey-
lin, D.D. and
Chaplain to
Charles the 1st
and Charles the 2^d, 2 part.

Epist. Dedicat.

' of such *Eminent virtue*, (as the Author
 of his life writes of him) ' Such an *Ex-*
 ' *emplary Piety* towards God, such an *un-*
wearied fidelity to his *Gracious Sovereign*,
 ' and of such a *Publick Soul* towards
 ' *Church and State*, that he *lived the Ho-*
nour, and dyed a Martyr of both. I say,
 ' this

'this Great, but at last unfortunate Pre-
 'late, thus delivers his Considerate Opini-
 'on, that the Supream Magistrate in the
 'Estate Civil, may not abrogate the Laws
 'made in Parliament, though he may dis-
 'pence with the Sanction or Penalty of
 'the Law, *quod hic & nunc*, as the Law-
 'yers speak.

Arch-Bishop
Laud against
Fisher, Printed
1673.

The next I shall give You, is, that
 Learned and moderate Primate and Me-
 tropolitan of all Ireland, Dr. James Usher,
 late Lord Arch-bishop of Armagh, who in
 his Book entituled, *The Remer communica-
 ted by God to the Prince, and the obedience
 required of the Subject, composed purpose-
 ly for the Rights both of Princes and Sub-
 jects, and for the confirmation of stag-
 gering Loyalty, assures us, that POSI-
 TIVE LAWS, being (as other works of
 men are) IMPERFECT and not free
 from many discommodities, if the STRICT
 OBSERVATION thereof should be
 pursued in EVERY PARTICULAR;
 it is fit the SUPREAM Gouverour
 should not himself only be EXEMPT-*

Vid Epis de-
 dicat. to King
 Charles 2. by
 James Tyrrell
 Esq;

ED from SUBJECTION thereunto, but also be so far LORD OVER THEM, that where he feeth cause he may ABATE, or TOTALLY REMIT the PENALTY incurred by the Breach of them, DISPENCE with others for the NOT OBSERVING of them at all; yea, and generally SUSPEND the EXECUTION of them, when by experience he shall find the Inconveniences to be greater then the profit that was expected should redound thereby unto the Common-wealth. PLUTARCH setteth this down as a chief point of that natural skill which PHILOPOEMEN had in Government, that he did not only rule according to the Laws, but over-ruled the Laws themselves, when he found it conducing to the weal-publick.

*Plutarch, in
Comparat. Fla-
minij et Philo-
poemem.*

And he saith a little before, by the LAW OF THE KING, I understand such ordinances as are MEERLY CIVIL and POSITIVE; the COACTIVE POWER whereof being DERIVED from him who is the SUPREAM LAW-GIVER UNDER GOD ON EARTH, He himself cannot properly

properly be said to be tyed thereby. For as with the Grammarians, the Imperative mood hath no first Person, so with the Civilians,

(a) *no man can command or forbid himself; at least wise, no (b) man can impose such a Law upon himself, but that he may re-cede from it when he pleaseth. And with the Schoolmen, a Law hath power to direct such Acts as belong to those who are subject to the Government of (c) another;* whereupon no man, if we speak properly, doth impose a Law upon his own Acts. As *no man therefore is superior to himself, so no man hath Jurisdiction over himself; because none can oblige a man against his will, but only his Superior, and the Jurisdiction over a man's self may be dissolved at Pleasure.*

KINGS therefore, as he affirms in another place, *are said to be ABOVE THE LAWS whereby they govern their People, partly in respect of Themselves, partly in respect of Others: Of OTHERS, in as much as they have POWER to JUDGE (a) according to their own CONSCIENCE,*

(a) *Marcian in l. si de res sua, de recept., arbit., vid. et Ulpian in l. ille a quo, Sect. Tempsti- vum, D. ad Se- nat. Trebel. et in l. Quod au- tem, Sec. Uxeri quis D. de donat inter, viz.*

(b) *Hermog. in l. si quis Sect. I. D. deleg. 3.*

(c) *Thom. 112. quest. 93. artic. 5.*

(a) *Cynus in l. rescript. Cod. de precib. Im- per. offerend.*

Thom. in 1.2.
quest. 96. artic.
5. ad 3.

*and not according to the Letter of the Law ;
as also to DISPENCE in some Cases with
the very OBEDIENCE, in some with the
PUNISHMENT required by the LAW.*

' For, he quotes *Aeneas Silvius* a little after saying, ' *Equity* is that which is just beyond the written Law : Now if the Law doth command one thing, and *Equity* perswade another, it is fit the Emperor should temper the Rigour of the Law with the Bridle of *Equity*, as He who alone may and ought to look unto that interpretation which lieth interposed between Law and *Equity*. Especially seeing no Decree of the Law, although weighed with never so considerate Council, can suffitently answere the varieties and unthought on plottings of Mans Nature. And seeing the Condition of *human Law* is such, that it runneth always without stint, and there is nothing in it which can be at a perpetual stand; it is manifest, that in tract of time the Laws which before were just, prove afterwards to be unjust, and become now unprofitable, now harsh, now unrighteous :

‘unrighteous : for the moderating whereof
 ‘there is need of the Prince, who is Lord
 ‘of the L A W S. For if it fall out, that
 ‘any thing hath been more obscurely de-
 livered therein, it is fit the *Emperor* should
 ‘clear it, and amend that *harshness* of the
 ‘*Laws*, which he shall find to be *contrary*
 ‘and *disagreeable* to his *humanity*. For
 ‘where it is said, that a *Law*, although it
 ‘be hard, should yet be *observed*; that
 ‘respecteth the *inferior* *Judges*, and not
 ‘the *Emperour*; in whom is that *Power*
 ‘of moderating the *Laws* which they call
 ‘*Emperia*, or *Equity*, which is so *annexed*
 ‘to the *Supremacy* of the *Prince*, that by
 ‘no *Decrees* of man it can be pulled from
 ‘it. Thus far *Aeneas Silvius* out of
 ‘him.

Aeneas Silvi-
 us de Ortus &
 Authoribus Im-
 perii, cap. 2o.
 21.

‘In regard of Themselves *Kings* are said
 ‘to be *exempted* from *Subjection* to the
 ‘*Laws*, both because they are not *tyed*
 (otherwise than for convenience and
 good Example’s sake) ‘to the observance
 ‘of such as are meer positive and tempo-
 ‘rary *Laws*; and because they are not
 ‘liable

' liable to the Civil Punishments set down
' for the breach of any Law, as having
' no superiour upon earth that may exer-
' cise any such Power over them.

(a) Justin Ju-
nior, *Imp. in
prefatione con-
fest 3.*

(b) Symmach,
1. 10. Ep. ult.

And again, saith this Great Prelate,
while the Laws do stand in force, (a) it is fit
' that somtimes the King's Clemency should
' be mingled with the severity of them;
' especially when by that means the subjects
' may be freed from much detriment and
' damage : (b) The Condition of the Ma-
' gistrates, whose Sentence is held corrupt,
' if it be milder than the Laws, being one
' thing; the Power of Princes, whom it
' becometh to qualifie the sharpness of them,
' a far different matter.

To this Eminently Reverend and Ju-
dicious Primate, I shall next subjoyn the
(c) In his Pre-
face and Life
by Dr Isaac
Walton.

(c) humble, patient and learned Dr Robert Sanderson, late Lord Bishop of Lincoln, that you may see what his Opinion is in this matter. But before I give you his Words, let me beg your favour to hear what the Modest and Holy Writer of his Life, Dr Isaac Walton says of that Book from whence

whence I produce them. How much the Learned World stands obliged to Him for his Lectures de Conscientia, I shall not attempt to declare, as being very sensible, that the Best Pens must needs fall short in the commendation of them: So that I shall only add, that they continue unto this day, and will do for ever, as a Compleat Standard for the Resolution of the most material doubts in Casuistical Divinity. And now Sir, pray observe what the Bishop says.

Upon a Doubt, how may that be understood which so commonly is spoken, Salus Populi son's Cafes of Bishop Sander-
est Suprema Lex, the safety of the Peo-
ple is the Supream Law; he among other
things, thus declares, 'There is no sober
man will deny, that the Safety of the Peo-
ple, that is, of the whole Commonalty,
as that word comprehends the King, to-
gether with the Subjects, is the Supream
Law; but that the Safety of the People,
that is, of the Subjects, the King being
excluded, is the Supream Law, there is
no man will affirm it, unless he be a
Fool, or an Imposter; a Fool, if he doth
Bishop Sander-
son's Cafes of
Conscience,
translated by
Robert Codring-
ton, Master of
Arts, Printed
1660. ninth
Lecture.

'believe what he himself saith, and an
 'Imposter, if he doth not believe it. But if
 'any man will seriously look into the O-
 'riginal of this Aphorism, I do believe he
 'will more easily grant, that it ought
 'more precisely to be understood of the
 'Safety of the Prince, than of the Safety
 'of the Subjects. This Saying so tossed
 'up and down in the Mouthes of all
 'Men, came to us from the *Romans*, and
 'was then used by them when their Re-
 'publick did flourish most of all under
 'a Popular State: And there is no great
 'Reason that any man should wonder,
 'that the People's Safety was the Supream
 'Law with them, with whom the People
 'themselves were the Supream Power;
 'In the Judgment therefore of those wise
 'Antients, who were the first Authors of
 'this Aphorism, the Safety of the *Supream*
 'Power was the *Supream Law*, of the Peo-
 'ple indeed in a *Democracy*, but of a *King*
 'in *Monarchy*.

"But I say, it being admitted, but not
 'granted, that this Aphorism is properly
 'understood

understood of the Safety of the People,
 that is, of the Subjects, it is nevertheless
 perversly wrested to the Prejudice of Re-
 gal Dignity, which even so doth render
 its Power more Ample and Illustrious in
 this sense. A King that gives Laws and
 Statutes to his People will not be so bound
 up by his Laws, that it shall not be law-
 ful for him, the safety of the Common-
 wealth being in an apparent danger, to
 provide for the safety of Kingdom and
 People committed to him by God, even
 against the words of the Law; not that
 it is lawful for Subjects under the pretence
 of the defence of their Liberty to break
 all the bonds of Laws and Fidelity, and
 by an intollerable presumption to trample
 on the Authority of their King, but that
 it is lawful for the Prince in the Preservati-
 on of his own and his Subjects Safety, to lay
 aside for a while all strict observance of the
 Laws, and to make use a little of an Arbi-
 trary Right, least by too unseasonable and
 superstitious Reverence of the Laws, he may
 suffer both his own Person, and his People
 that

'that are subject to him, and even the
'Laws themselves, to fall into the Power
'of his Enemies.

I will close up this Christian Doctrine
of our Bishops with one Authority more,
and that is of our Present Right Reverend

Sermon preach-
ed upon the a-
nniversary so-
lemnity of the
happy Inaugu-
ration of our
dread Sovereign
Lord King
James 2. by
Thomas Cart-
wright, D. D.
Dean of Rippon,
and Chaplain in
Ordinary to his
Majesty.

where you will find him thus to inform
you, and all other good Subjects; 'So that
'the King may, it seems, make use of his

Cols and Glo-
ver against the
Bishop of Litch-
field.

'Prerogative, as God does of his Omnipo-
tence, upon some extraordinary occasi-
ons: For as my Lord Hobart well ob-
serves, *The Statute Laws are made to ease*

'him of his Labour, not to deprive him of
'his Power, and that he may make a Grant
'with Non-obstante to them: And indeed

'the Power of dispensing with particular
'Laws, in some Emergencies, is such a
'Lex Coronae, such a Prerogative, without
'which no Kingdom can be well govern-
'ed, but Justice will be turned into Worm-
wood. For there never was yet, nor ever
'will

'will be, any human Law , framed with
 'such exact Skill and Policy, that it might
 'not, on some occasion or other, be bur-
 'thensome to the Subject, and obstructive
 'to the publick good of the Common-
 'wealth : There being particular Cases
 'and Exigencies, so infinitely various,
 'that 'tis impossible for the wit of man to
 'foresee or prevent them. And therefore
 'in all Government there must be a *Power*
 'Paramount to the *written Law* ; and we
 'have good reason to bless God, that this
 'is lodged but in *One*, and in him whom
 'he hath set over us, to be his *Vice-ge-
 'rent* ; by whose Authority, they who
 'break the *Letter of the Law*, in pure
 'Zeal and Loyalty, to serve the ends of
 'Government, and to uphold the *Crown* on
 'the Right Head, that *does* and *ought* to
 'wear it, may be *relieved*, and *pardoned*,
 and *rewarded* too.

Thus Sir, have I given you in short
 the Sence and Judgment of our Spiritual
 Guides, the Great Fathers of the Church
 of *England* in the Point in Question be-

D tween

tween us ; I will now descend to men of less degree in the Church , but they shall be men of great and eminent Learning, sober Understandings, and of exemplary Piety and Gravity, and you shall hear how they All concur in the same Judgment as concerning this Point of Regal Sovereignty.

The First shall be the Reverend Dr *Peter Heylin*, ‘ whose knowledge was extensive as the Earth, and who had a perfect familiarity with the present State of all the Countries in the World, (as the Ingenious Author of his Life informs us) and ‘ one who is honoured by all ‘ true Sons of the Church of *England*, ‘ with a due veneration for his Learned ‘ and Elabourate Works. And He speaks thus.

‘ He (*viz.* the King) hath Authority
‘ by his *Prerogative Royal* to dispence with
‘ the *Rigor of the Laws*, and sometimes
‘ to pass by a *Statute* with a *Non-obstante*.

The Learned and Judicious Dr *Isaac Barrow*, late Master of *Trinity Colledge* in *Cambridge*,

In the Account
of Dr *Heylin's*
Life.

Cambridge, in his Treatise concerning the Popes Supremacy affirms thus — ‘It is indeed a proper Indowment of an absolute Sovereignty, immediately and immutably constituted by God, with no Terms or Rules limitting it, that its will declared in way of Precept, Proclamations concerning the Sanction of Laws, the Abrogation of them, the Dispensation with them, should be observed.

And says he a few Leaves futher, ‘The Power of enacting and dispensing with Ecclesiastical Laws touching exterior Discipline did of old belong to the Emperor. And it was reasonable that it should; because old Laws might not conveniently sute with the Present State of things, and the publick welfare; because new Laws might conduce to the good of Church and State, the care of which is incombent on him; because the Prince is bound to use his Power and Authority to promote Gods Service, the best way of doing which may be by framing Orders conducible thereunto.

D 2

And

And in another place he declares that
 ' it is a Priviledge of Soveraigns to grant
 ' *Priviledges, Exemptions, Dispensations.*

Thus sayes the Reverend Dr *Sherlock*,
Master of the Temple, in a positive manner, ' it does not become any man, who
 ' can think three Consequences off, to
 ' talk of the *Authority of Laws*, in *deroga-*
 ' *tion to that Authority of the Sovereign*
 ' *Power*. The *Sovereign Power* made the
Laws, and can repeal them, and dispence
 with them, and make new Laws: the
 ' *only Power and Authority of the Laws* is
 ' *in the Power which can make and exe-*
 ' *cute Laws*. *Sovereign Power* is *inseper-*
 ' *able from the Person of a Sovereign*
 ' *Prince*.

I shall in the next place give you the
 words of the Ingenious, and most painful
 Searcher into Truths, *John Nalson*, Dr.
 of Laws, whose indefatigable Industry
 hath sufficiently appeared in those Vo-
 lumes of Historical Collections he lived
 to see published to the World, his words
 are These.

Dr Nalson's
Common Inter-
est of King &
People, chap. 6.

[In]

' In the *Kings Power* it is to remit the
 ' Severities of the *Penal Laws*, whereby
 ' he may manifest his Goodness and *Cle-*
 ' *mency* as well as his Greatness and *Justice*,
 ' by graciously *pardoning* the Smaller
 ' Breaches of his *Laws*, and the more
 ' Capital Offences which he might most just-
 ' ly punish.

And who in the World can dispute this ? When, as *Dr. Hick's* in his *Jovian* tells us for certain, that upon whomsoever *God is understood to bestow the Sovereign Authority*, *he must also be understood to bestow upon him all the Jura Majestatis, or essential Rights of Sovereignty*, according to that *Maxime*, ' *Qui dat esse, dat et omnia pertinentia ad esse*; *He that gives the Essence, gives also the Properties belonging to the Essence*. And doth not all mankind consent in this, that the *King is the fountain of mercy as well as of Justice*? Surely then the *Penal Laws*, especially those made *meerly for diversity of Opinions in Religion*, which (not to call them *unchristian*) since our *Saviour never offered any*

case of Re- any external force and Compulsion to make men obey his Laws, as the Learned master of the Temple assures us, but however) are in themselves by experience proved very unreasonable, ought at least to be Subject to the Goodness and Mercy of the Prince, to dispence with them, when He in his Wisdom shall judge it most necessary for the Good of his People in generall.

For as 'the Agyptian Hieroglyphick for 'Government was an Eye in a Scepter : 'So the chief Magistrate is like a watch- man upon a Tower, who is to look 'down and view the general state of 'his People, and to conduct himself ac- 'cordingly.

The Reverend Dr Pulte^r, in his most extraordinary Book concerning the Moderation of the Church of England, saith, 'that *Emōrea*, Moderation, as it is now generally used, is a word borrowed from the Law, and is used by the Masters thereof, to denote such a gentle and benign temper, as disposeth those who have the Administration of the Laws (which, You

Do jure Uniformitatis Ecclesiasticae: by Hugh Davis, L. L. B.
lib. 3. chap. 15.

Chap. I.

You see, is the Imperial Sovereign, *who* ^{*Davia's ut sup.*} *bath the Supream Jurisdiction over all others,*
and Jurisdiction is defined by the Civilians
to be, Potestatem Juris dicendi, a Power
of giving Laws to others) 'to remit of
'their Rigour, where either (first) they press
'too hard upon particular persons; or else
'(secondly) to supply the defects of the said
'Laws, where they provide not sufficiently
'for particular cases; in order thereunto,
'squaring their Determination by the natu-
'ral rules of Justice and goodness, rather
'than by the Letter of the Law.

And a little further, the same Doctor goes on, saying, 'moderation, in the Forensick fence wherein we take it, is defined by Aristotle to be the Correction of the Laws wherein because of their Universality they are deficient. 'From whence, 'as it must be supposed, to be confined to those to whom the Administration of the Laws is committed, who Alone can have the Power of correcting them: So nothing therefore will be further requisite to shew, than that it disposeth them;

Dr Puller's Moderation of the Church of England, chap. 1.

*Ἐπαρθὲ θεμα
νόμων ἐλεῖται
διὸ τὸ καθέναν.*
*Arist. Eth. 1. 5-
chap. 14.*

' where the *Laws* press too hard upon
' particular persons, to relax the *Rigour*
' of them ; as on the other side, where
' they do not sufficiently provide for them,
' to supply their defect.

' All Laws, we know, are for the pu-
' nishment of Evil Doers, or for the
' praise of them that do well : but it be-
' ing impossible so to provide for the pu-
' nishment of evil doers, as not sometimes
' to bring even the Innocent within the
' compass of it ; because what, genera-
' ly considered, ought to be lookt upon
' and censured as evil, may yet upon sun-
' dry considerations and circumstances
' have nothing of evil in it, or at least be
' worthy of pardon ; either the *Innocent*
' must suffer together with the *nocent*,
' (which so benign a *virtue* as that we
' treat of cannot allow) or it must dispose
' those to whom the *Administration* of the
' *Laws* is committed to remit of their
' rigour in such *particulars*, and exempt
' them from the undergoing of it : it
' being in like manner impossible for *Laws*
so

'so to provide for the encouragement of
 'those who deserve well, as that some-
 'time such may not be past over or neg-
 'lected ; partly because all cases cannot be
 'foreseen by the *Law-giver* ; and partly
 'by reason of the shortness of his expressi-
 'ons ; either some who may deserve in-
 'couragement may be excluded from
 'partaking of it, (which so benign a ver-
 'tue as we speak of cannot easily permit)
 'or it must dispose those to whom the
 'Administration of the Laws is committed
 'to ampliate their favours; and to take such
 'within the compass of them.

Once again, 'Equity and moderation,
 saith He in the next page, 'is the publick
 'honesty of the Laws; without which,
 'Justice often would be turned into
 'Wormwood : it contains the excellent
 'Spirit (*spiritus*) the mind and reason of the
 'Law, and is the most Sacred and vene-
 'rable part of it: As it is the honour and
 'perfection of the Laws, so it is the Sanctua-
 'ry of such as happen to be oppressed by the
 'Rigour of the Letter.

*Est Scriptum
Legis angustum
interpretatio
diffusa. Senec. I.
4. controv. 27.*

I will now, Sir, trouble you with but one instance more upon this Subject, (though I could multiply, I am confident, Authorities of this kind even beyond your patience) and that is of One, that will needs be Anonymus, and therefore so he shall pass for me, but his words are These.

The Harmony
of Divinity and
Law, in a dis-
course about
not resisting of
Sovereign
Princes.

'It is the *Prerogative* of the King, to dispense with many *Acts* of Parliament by a * *Non-obstante*, or clause of *notwithstanding*, especially such, as bind him from any *Prerogative*, that is *solely*, and inseparably annexed to his *Sacred Person*, and *Royal Power*.

And even to the Asterick * There is this marginal Note, viz, ' 44. Eliz. in the house of Commons Sir George Moor said; We know the Power of her Majesty cannot be restrained by any Act. Why therefore should we thus talk? admit we should make the statute with a *Non-obstante*, yet the Queen may grant a Patent with a *Non-obstante* to cross this *Non-obstante*. I

Townsend's
Collect. pag.
234.

To I have done, Sir, now with our Reverend Prelates and Doctors of the Church of *England* as to this Particular, and hope, I have sufficiently proved to you, that their Judgment and Doctrine doth clearly warrant this Great Prerogative of dispensing with *Penal Laws*, to be in the King.

Let us see in the next place what were the Reasons that induced the Reverend Judges in *Westminster Hall*, (who (the Law sayes) are the Expositors of Acts of Parliament, and are likewise *Custodes jurati s. Prærogativæ Regie*,) so openly and solemnly, after mature deliberation, to declare their Resolutions in this Point for the King.

The Reasons that perswaded them were These that follow, viz.

I. That the Kings of *England* are Sovereign Princes.

II. That the *Laws of England* are the King's *Laws*.

III. That therefore it is an Incident Inseparable

Inseparable Prerogative in the Kings of *England*; as in all other Sovereign Princes to dispence with *Penal Laws* in particular cases, and upon particular necessary Reasons.

I V. That of these Reasons, and these Necessities, the King himself is the sole Judge. And then which is Consequent upon all.

V. That this is not a *Trust* invested in, or granted to the King by the *People*, but is the antient Remain of the Sovereign Power, and Prerogative of the Kings of *England*, which never yet was taken from them, nor can be.

Now, Sir, if such hath been the Doctrine of our most Eminent Clergy of the Church of *England*, (and in it they have delivered to us nothing but the words of Truth in Righteousness) that the King by his *Imperial Sovereignty*, when he shall see the *Necessity* of the State to require it, (of which he is the *only Judge*,) may dispence with *Penal Laws*. How can you, or

or any man, who is a sincere lover of the Church of *England*, be dissatisfied with the Resolution of our Reverend Judges in this matter, seeing the Reasons they went upon were only such as were exactly correspondent with the avowed Doctrines before recited ; and that by this Declaration of theirs, the *Law of the Kingdom of England* concerning this sovereign Power in the Crown, is no more, than what was before publickly asserted to be the *Divinity of the Kingdom*.

Besides, *Lex vigilat pro Rege*, saith the Law, and the Judges are sworn to maintain all the Kings Prerogatives ; which are part of the Law of *England*, and comprehended within the same ; therefore it is said, that *Imperij Majestas est Tutela Sa-
luis*, the Dignity of the Prince is the Peoples Security. The Kings Prerogative and Privileges, are incident to his Crown, and Heneed not prescribe in any Prerogative, for it is as ancient as his Crown is, and is not only the Law of the *Exchequer*, but the Law of the *Land*,

F as

Co. 2 Inst. f.
496.

I. Inst. 64. b.

Lane. 26.

N. Bendl. 117. as that which is his by the ancient Laws of the Land. Wherefore the Judges of the Courts of *Westminster* are to judge in matters of Prerogative by this Rule, that what-
Sheph. tit. Pre-
rog. foever may be for the Benefit and Profit of the King, shall be taken most largely for him, & whatever may be against him, and for his disprofit shall be taken strictly: and it is the Duty of every Judge of all Courts, High and Low, to take great care to preserve the Kings Right, and for that purpose to take every thing at the best for him.

² Ro. rep.
508.

Royallists de-
fence: chap. 5.
pag. 49.

And, Sir, unto the Judges the People are bound lastly and finally to submit themselves for matter of Law, according to the opinion of the Learned Author of the Royallists Defence.

But I remember likewise you seemed to startle at the thoughts of this Power; and were afraid, if at any time the King should think it necessary and convenient to exert it, and to grant a general Liberty of Conscience, that the Church of England would be extreamly shaken in her securi-

ty.

ty. What strange Jealousies and Suspitions some weak men may have, I suppose it will not be here worth while to consider; but certainly our Great *Supporters* of the *Ark of God* can never allow themselves in so *feminine* a passion. They know they have an infinitely wise God, and a most Gracious King to trust to: this hath been their Doctrine, and ought we not to practice it? They say,

1. 'They have the Care and Providence
 'of God for their Security, who is King Jovian chap. 12.
 'of Kings, Lord of Lords, and the only
 'Ruler of Princes; and that *the Hearts*
 '*of Kings are in his Rule and Governance,*
 '*and He doth dispose and turn them as seem-*
 '*eth best to his godly Wisdom:* according
 'to what Solomon said, and perhaps upon
 'his own experience, *That the Kings*
Heart is in the hand of the Lord, as the Ri-
vers of Water, he turneth it whithersoever he
will. 'SO THAT THEY HAVE ALL
 'THE SECURITY THAT ANY PEO-
 'PLE IN THE WORLD EVER HAD,
 'HAVE, OR OUGHT TO HAVE. Be-
 'sides, F 2 2. They

2. They have a most Gracious King to trust to. For,

His Majesties
most Gracious
Declaration, &c.

Bishop of Chel-
ters Sermon
ut sup.

1. They have his Royal Word, *that he will protect and maintain the Church of England, in the free exercise of her Religion, as by Law established*; ‘and can she ever be trusted in safer Hands than his? ‘He hath done more than ever any of us durst ever venture to look for, to give us Confidence in him; enough to puzzle our Understandings, as well as our Gratitude: And how can he give us *better security* than he has done? Shall we suspect him without cause? or remain dissatisfied when he hath given us the best security that our Cause admits of? ‘To suspect our Prince, where we cannot help our selves, is of all fears the most unreasonable.

2. Again, ‘We have the *Conscience* of Jovian ut sup. ‘the Prince for our security, who hath all the moral Obligations, and the fear of God, to keep him from oppressing us, so long as we keep our selves within the *Conscience* of the Duty which we owe unto him. ‘The

' The Common Principles of Humanity, Justice and Equity, are engraven
 ' by the Finger of God upon the Minds
 ' of Kings, as well as upon other Mens; and
 ' they cannot do wrong upon any parti-
 ' cular Person, much less to great num-
 ' bers of their Subjects, without under-
 ' going the same uneasie remorse that o-
 ' ther men do, when they injure one ano-
 ' ther. This hath been found by sad ex-
 ' perience in *Pagan Princes*. —— And if
 ' Conscience be a restraining Principle in
 ' Heathen Princes, if they cannot without
 ' such Soul torments pervert Justice, and
 ' violate their Oathes, and the Laws, it
 ' must needs much more be a powerful
 ' Principle of Restraint to *Christian Kings*,
 ' who are taught to know that they are
 ' Gods Ministers, and that he will call
 ' them to a severe Account for oppres-
 ' sing his People over whom he set them :
 ' And shall not the fear of God's Anger
 ' and Judgments keep the Sovereign from
 ' injuring of them ?

3. But further still, ' As the *Church of*
England.

‘England hath the Prince’s Conscience,
 ‘for her Security, so she hath his honour
 ‘too. For Princes (like other men) are
 ‘tender of their Honour, and good
 ‘Name, and are powerfully restrained
 ‘by shame from doing Evil to their Sub-
 ‘jects. — Though they may be desir-
 ‘ous for their honour to have the Times
 ‘computed from their Conquests, yet
 ‘the same Principle of Honour will ordi-
 ‘narily make them ashamed to have them
 ‘computed from their Massacres, and
 ‘Persecutions, which will but get them
 ‘the Surname of *the Bloody*, or *the Tyrant*,
 ‘unto the end of the World. Honour,
 ‘as Moralists observe, is a Secondary, or
 ‘Civil Conscience.

And as for our Prince, ‘who was ever
 ‘so exceeding tender of his Honour as
 ‘He? so just to all, and hath He not
 promised to uphold and maintain this
 Church, and her Legitimate Children?
 — ‘He knows, that *ours is a Religion*
 ‘that hath alwayes asserted the *Rights of*
 ‘*the Crown*; with life and fortune: and
 how

Bishop of Chel-
ters Sermons ut
sup.

'how chearfully the Members of it have
 'spent their Blood and Treasure in *his*
'Own, his late Majestie's, and his Father's
'Service, and how they stand affected to
'his Prerogative.

'And He is very well content, we
 'should be as faithful to God, as we are
 'to *him*; as true to *our Religion*, as to
'our King: God preserve and prosper him
'for it.

Now since our *own Religion* (as to the
 free exercise of it) is thus *Secured* to us,
 and seeing that by his Majesties *Gracious*
Declaration he is willing that *no man*
 should be forced to *his Religion*, or *drove*
 against his *Conscience* from the *Religion*
 he professeth; and seeing it is manifestly
 necessary, that, as Sails, so Laws, are
 to be turned, and as Occasion, time and
 circumstance, and reason of state shall
 direct, either to be altered, or revoked:
 And if Acts of Parliament formerly made
 to try what good effects they could
 work in the state, do apparently prove
 mischievous and ineffectual by their too
 great.

great rigour and violence, and by the Great Numbers of those that are of dissenting Judgments ?

What dishonour can it be for the King to lay them asleep for a while to stay those passionate heats, and fierce oppositions of such as seem adversaries to his Grace, or for any Parliament to repeal them, for the same Reasons, *non coercet sed provocat violentia*, For too heavy a hand upon those whom the Law casts down, shews the will rather to oppress the Offender, then to cure the offence? 'Tis the greatest honour to Kings, that their mercy, like that of the Almighty, is more eminent than their Justice, and that their Benches, and Courts, can witness more compassion than severity; for He that sets open the Prison doors in so wise and gracious a manner, meaneth not to conquer the Hearts and Consciences of his People by Torment, but to winn them by mercy and sweetnes. Clemency is a virtue sometimes of as great policy as Piety, because it begets Love, and

Love

Love breeds Loyalty, commands the very Soul, and lays the Body at the Feet of the oblige; Mercy kindles Fire and Zeal in the Hearts of Subjects;

Liberty of Conscience is a Natural Right, and therefore our Saviour compelled none to receive his Doctrine, but *est Dominus non Cogens*, he is not a constraining Lord, but committing his Liberty to the will, said publickly to all, *if any man will come after me*; and to his Apostles, *Will ye also go away?* and his Disciples were not Commanders, but Instructors and Teachers, which was their Commission. Compulsion and terrane Penalties are out of his Jurisdiction, whose Kingdom was *not of this World*, which he acknowledgeth not only in speech, but in practise: For when the Disciples would have commanded Fire from Heaven to have consumed the Samaritans, he rebuked them; and when he was apprehended by the Chief Priests and Elders, he could have commanded Legions of Angels, but would not. It is

Grotius.

Luke 9. 54.

Matt. 26. 53.

Irreligion to take away the Liberty of Religion; so *Tertullian, ad Irreligionis Elo-
gium concurrit*; this concurreth to the com-
mendation of Irreligion, to take away the
liberty of Religion, &c. and therefore,
saith the Apostle, *we have not Dominion over
Your Faith.*

2 Cor. 1. 24.

Sir, I cannot tell how well to shut up
this Discourse without the words of that
Learned and most Reverend Dr. Gerard
Langbaine, who was *Provost of Queen's Col-
lege in Oxford*, so well known to all, nor
only at home, but abroad, that the Fa-
mous Rhetorician, *Longinus*, could scarce
speak any thing beyond the merit of so ex-
cellent a Person.: This Doctor in his Judi-
cious *Refutation of the Damnable League
& Covenant*, (which was then so furiously
contended for) to be imposed upon the Con-
sciences of those who expressed their Zeal
to his Majesties righteous cause, in which,
without all peradventure, he spoke the in-
ward Sentiments of all the Loyal Suffering
Ecclesiastical Clergy of England, did there most admirably.

rably instruct us, what a sandy Foundation that is, which supports Persecution for Conscience sake. His words follow.

'Persecution in matters of meer Religion is a Course against the Nature of Religion it self, for Faith, the Soul of Religion, is an inward Act of the Soul, which all the Tyranny in the World, that the malice of the Devil can invent, or the wit of man can exercise, can neither plant where it is not, nor extirpate where it is. It is the gift of God, freely begotten in the Hearts of Men, not by threats and Terrors, not by Tortures and Massacres, but by the quiet still voice of the word preached; *Suadenda, non cogenda*. And therefore St. Paul, though a Lawful Governour in the Church, flatly disclaims any domineering Power over the Conscience. As for the outward profession of Religion, neither is that Subject to force and violence: A man may confess Christ, and his Faith in him, as

Langbain's Review of the Covenant, Printed 1661.

freely in bonds, as at Liberty; as gloriously upon the Cross, as upon the Throne.
 Fear indeed may incline a weak Conscience to dissemble his Opinion, but cannot constrain him to alter it: Fire and Faggot are strong Arguments of a weak Cause, undeniable Evidences of Cruelty in Those that use them, but slender, motives of Credibility to beget faith in those that suffer by them. Lastly, for the external, free, and publick practise of Religious Duties, that I grant may be restrained by the outward violence of man, but when it is so, it is not required by God, who never expects to reap what he did not sow.

In another place, he says, 'the most Antient Apologists for the Christian Faith, use this as an Argument to prove the Religion of their Persecutors to be false, and their own true, That stood in need of humane force to maintain it, but theirs stood by the sole Power of God.'

It is against (says he a little further) the

the Innate Principle of the Law of Nature, *Quod tibi fieri non vis, alteri ne feceris.* Those, who plead most for extirpation of Hereticks, when it comes to be their own Turn to be under the Cross, stand for Liberty of Conscience, and declaim against Persecution for Religion, as a thing utterly unlawful ; and surely if we will not suffer it from others, we may not use it our selves.

Therefore, as Dr *Fuller* rightly sayes, if ever the Practice of Moderation, as well as any Discourse thereof, were reasonable ; it may be supposed now, when, for ought we know, the lasting happiness of the Kingdom and Church, may depend immediately upon this rare and desirable Temper, acknowledged of all most excellent.

*Fuller's Moderate-
ration. To the
Reader.*

I will conclude all with that Admirable Sentence of Dr *Barrow* in his forementioned Treatise, that *Relief of the Oppressed, or Clemency to the distressed, are noble Flowers in every Sovereign Crown.*

Thus

Thus, Sir, You see how ready I am,
as far as my Abilities will extend, to
contribute to the Satisfaction of Your
Judgment. I shall be as zealous still to
go on in so pious a Duty, if there be
any remaining doubts and Scruples you
will make known to,

SIR,

Your humble Servant, &c.

F I N I S.
